

Aug 20, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIEL JOSEPH WEST,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

2:19-cv-125-SAB

**ORDER DENYING MOTION
TO RECONSIDER**

Before the Court, without oral argument, is Petitioner's *pro se* Motion to Reconsider, ECF No. 7, and his Addendum to the motion, ECF No. 8. Having reviewed the pleadings and the file in this matter, the Court is fully informed and denies the motion.

By Order filed July 5, 2019, the Court summarily dismissed Mr. West's *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. ECF No. 5. Petitioner had not named a proper Respondent. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). He also conceded that he had not fully exhausted his state court remedies before filing his petition. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004); *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999).

1 In the Motion to Reconsider, Petitioner contends that because a habeas
2 petition is “an original action,” and not an appeal or a “mechanism requesting the
3 review of [his] judgment of conviction,” he is not required to exhaust state remedies.
4 ECF No. 7 at 1. The habeas statute clearly recognizes the jurisdiction of state courts
5 to adjudicate constitutional issues, providing for federal habeas corpus relief when
6 the state court’s adjudication was “contrary to, or an unreasonable application of,
7 clearly established federal law, as determined by the Supreme Court of the United
8 States.” 28 U.S.C. § 2254(d)(1).

9 Petitioner re-asserts his contention that his conviction and sentence are invalid
10 because he was not charged by an indictment of a grand jury in violation of the Fifth
11 Amendment. ECF No. 7 at 4. This contention is meritless. There is no Federal
12 Constitutional violation when a prosecuting attorney’s criminal information is
13 substituted for the grand jury’s indictment. *See Hurtado v. People of State of*
14 *California*, 110 U.S. 516 (1884) (Rejecting claim that grand jury indictment is
15 essential to due process and that it is a violation of the Fourteenth Amendment for a
16 state to prosecute a defendant by criminal information).

17 A motion for reconsideration may be reviewed under either Federal Rule of
18 Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief
19 from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.
20 1993). “A district court may properly reconsider its decision if it ‘(1) is presented
21 with newly discovered evidence, (2) committed clear error or the initial decision was
22 manifestly unjust, or (3) if there is an intervening change in controlling law.’” *Smith*
23 *v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *School Dist.*
24 *No. 1J*, 5 F.3d at 1263). “There may also be other, highly unusual, circumstances
25 warranting reconsideration.” *School Dist. No. 1J*, 5 F.3d at 1263. These standards
26 apply in habeas corpus proceedings under 28 U.S.C. § 2254 to the extent they are
27 not inconsistent with applicable federal statutory provisions and rules. *See Gonzalez*
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1 v. *Crosby*, 545 U.S. 524, 530 (2005).

2 In this instance, Petitioner has not presented newly discovered evidence. *See*
3 *School Dist. No. IJ*, 5 F.3d at 1263. He has not shown that the Court committed
4 clear error or that the dismissal Order was manifestly unjust. Furthermore, there has
5 been no intervening change in controlling law and there are no other circumstances
6 warranting reconsideration. *Id.*

7 Accordingly, **IT IS HEREBY ORDERED:**

8 Petitioner's Motion to Reconsider, **ECF No. 7**, is **DENIED**.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
10 provide a copy to *pro se* Petitioner. The file shall remain closed. The Court certifies
11 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
12 taken in good faith, and there is no basis upon which to issue a certificate of
13 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

14 **DATED** this 20th day of August 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

21 Stanley A. Bastian
22 United States District Judge
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